




Department of Health Care Services
MEMORANDUM

Date: October 2, 2008

To: Dan L. Colson
Chief Administrative Law Judge
Office of Administrative Hearings & Appeals
Office of Legal Services
1029 J Street, Suite 200

From: Thomas J. Rakela, C.F.E., Chief
Internal Audits
1500 Capitol Avenue, MS 2001
(916) 445-0759 

Subject: Final Report – Office of Administrative Hearings & Appeals (08604)

Internal Audits has completed its review and evaluation of the internal control structure of processing and monitoring appeals at the Department of Health Care Services' Office of Administrative Hearings and Appeals (OAHA). The Findings and Recommendations, OAHA's response, and Internal Audits' comments pertinent to the response are contained in the accompanying report.

As part of its operating responsibilities, Internal Audits is responsible for follow-up on audit recommendations. Therefore, please submit a status report on the implementation of the recommendations within 30 days from the date of this letter. The status report should include a plan of corrective action, implementation dates of those actions, and the individuals responsible for implementation. Necessity for further follow-up will be determined after review of the status report.

We appreciate the hospitality and cooperation extended by OAHA, and hope that the recommendations will benefit your future operations.

If you have any questions, please call me at (916) 650-0272.

Attachment

cc: Bill Alameda, Chief
Administrative Appeals
Office of Administrative Hearings & Appeals
Office of Legal Services
1029 J Street, Suite 200

**DEPARTMENT OF HEALTH CARE SERVICES
INTERNAL AUDITS**

**REVIEW OF THE DEPARTMENT'S
OFFICE OF ADMINISTRATIVE HEARINGS AND APPEALS'
INTERNAL CONTROL STRUCTURE OF
PROCESSING AND MONITORING APPEALS**

OCTOBER 2008

**AUDITOR:
PATRICIA PRASAD**

**THOMAS J. RAKELA, C.F.E.
CHIEF OF INTERNAL AUDITS**

ASSIGNMENT NO. 08604

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EXECUTIVE SUMMARY

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Internal Audits has completed its review of the Office of Administrative Hearings and Appeals (OAHA) internal control structure of processing and monitoring appeals. Organizationally, OAHA is part of the Department of Health Care Services' Office of Legal Services. Our review was conducted in accordance with standards established by the American Institute of Certified Public Accountants and the Institute of Internal Auditors.

Nothing came to our attention during the review of OAHA's processing and tracking of appeals that would cause our report to be qualified; therefore, our report contains an unqualified opinion. Overall, OAHA was processing and tracking current appeals adequately. However, two reportable conditions were found and are identified below.

- OAHA's appeal tracking system, Case Tracker 2000, is not accurate nor can it be relied upon to provide an overall reflection of OAHA's current caseload. There are many appeals listed as "Open" on the Case Tracker 2000 that have since been closed and sent to the State Record Center (SRC) for long term storage. As of April 23, 2008, Case Tracker 2000 listed 1,964 "Open" appeals. Of those, 229 appeals, or almost 12%, have been closed and have been transferred to the SRC.
- OAHA does not have documented procedures for each of its units or functions. By not having documented procedures, OAHA staff are not monitoring and processing appeals consistently. Also, OAHA is at risk of having a key person dependency issue.

The two findings were discussed with OAHA's management. Management was receptive and open to our recommendations.

AUDITOR'S OPINION

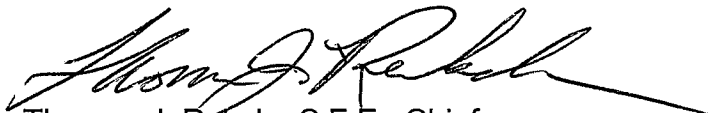
AUDITOR'S OPINION

Internal Audits has made a study and evaluation of the internal control structure of the appeal process at the Department of Health Care Services' Office of Legal Services, Office of Administrative Hearings and Appeals (OAHA) as of June 10, 2008. Our study and evaluation was limited to a review of OAHA's processing and tracking of appeals. Our study was conducted in accordance with standards established by the American Institute of Certified Public Accountants and the Institute of Internal Auditors.

In accordance with Government Code, § 13402 et seq., state agency heads are responsible for establishing and maintaining a system of internal controls. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of control procedures. The objective of a system is to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition.

Because of inherent limitations in any internal control structure, errors or irregularities may occur and not be detected. Also, projection of any evaluation of systems to future periods is subject to the risk that procedures may become inadequate because of changes in conditions, or that the degree of compliance with the procedures may deteriorate.

In our opinion, the system of controls of OAHA's processing and tracking of appeals in effect as of June 10, 2008, taken as a whole, was sufficient to meet the objectives stated above insofar as those objectives pertain to the prevention or detection of errors or irregularities in amounts that would be material in relation to the financial reports.



Thomas J. Rakela, C.F.E., Chief
Internal Audits

BACKGROUND

BACKGROUND

The Office of Administrative Hearings and Appeals (OAHA) is the Department of Health Care Services' (Department) court. Under Health and Safety Code, § 100171 the Director of the Department has the legal responsibility to provide a hearing process to adjudicate disputes from all Department programs. This function is delegated to OAHA. With few exceptions, OAHA hears all appeals for actions taken by the Department. Also, OAHA has entered into contracts with other state departments to hear their appeals.

Appeals are heard by three different staff classifications: Administrative Law Judges (ALJ), Hearing Officers, and analysts. Most appeals involve two levels. Most new appeals, except for the Hardship Waivers, are initially handled by a Hearing Officer who resolves questions of fact. Appeals not resolved at the Hearing Officer level are considered at hearings conducted by ALJ. In all ALJ hearings, the Department is represented by Staff Counsel from the Office of Legal Services' Administrative Litigation Team.

There are two levels of appeals for the Hardship Waivers. The first level is handled by analysts. It is based upon written documentation submitted by the petitioner. The petitioner can appeal the first level decision. The next level of appeal is conducted by a Hearing Officer. The petitioner is provided an opportunity to appear in front of the Hearing Officer to present his/her case. The Hearing Officer makes the final decision on the formal hardship waiver appeals.

FINDINGS AND RECOMMENDATIONS

FINDINGS AND RECOMMENDATIONS

The Department of Health Care Services' Office of Legal Services, Office of Administrative Hearings and Appeals (OAHA) has controls in place for processing and monitoring appeals. Overall, these controls are functioning adequately. The recommendations noted below will strengthen the existing controls.

APPEAL TRACKING SYSTEM

Finding 1 The appeal tracking system does not accurately reflect just the current appeals in process.

Condition OAHA's appeal tracking system, Case Tracker 2000, has been in place since 2000. The Case Tracker 2000 keeps inventory of cases that are "Open" (in process) and "Closed." It was found that the Hearing Officers and Administrative Law Judges (ALJ) are maintaining accurate information on their current appeals.

However, when the Case Tracker 2000 was first implemented, there were several Hearing Officers and ALJs that were reluctant or refused to use the system. They did not update their appeals as they were processed. As such, not all of the appeals listed as "Open" in the Case Tracker 2000 are currently in process. Instead, there are many appeals that have since been closed and sent to the State Record Center (SRC) for long term storage, but are still listed as "Open" in the Case Tracker 2000.

As of April 23, 2008, the Case Tracker 2000 listed 1,964 "Open" appeals. Of those, 229 appeals, or almost 12%, have been closed and transferred to the SRC.

The Case Tracker 2000 is not accurate nor can it be relied upon to provide an overall reflection of OAHA's current caseload. Also, OAHA stated that a new tracking system is being developed. Appeals from the Case Tracker 2000 will probably be migrated into the new system. If the Case Tracker 2000 is migrated into the new system as it is today, the new system will also be inaccurate and not provide management with useful information concerning OAHA's overall caseload.

Criteria Welfare and Institutions Code, § 14171 states that the director shall establish administrative appeal processes to review grievances or complaints arising from the findings of an audit or examination. In order to accomplish this objective, accurate and reliable information should be available for all appeals.

Recommendations A OAHA should reconcile the Case Tracker 2000. Only those appeals that are currently in process should be listed as "Open."

When the system is capable, only those appeals that are stored in the file room should be listed as "Closed" and those appeals that have been sent to the SRC, for long term storage, should be listed as "Archived."

B OAHA should include the SRC information (i.e. storage box number and the destruction date, if applicable) in the Case Tracker 2000. This will provide a complete record of the appeal. It will also make retrieving the appeal documents from the SRC much easier.

DOCUMENTED PROCEDURES

Finding 2 OAHA does not have documented procedures for each of its units or functions.

Condition OAHA does not have documented procedures for each of its units or functions. OAHA does have written procedures for the Scheduling Clerk (who schedules the ALJs hearings) and the processing of the Hearing Officers' decisions and the ALJs' final decisions.

OAHA does not have written procedures for processing incoming appeals. Nor were there written procedures for the Hearing Officers and ALJs for routine processes; such as, closing appeals in Case Tracker 2000 or monitoring appeals in the settlement agreement process. There were no written procedures for the Hardship Waiver unit.

Currently, one of the Hearing Officers processes all of the incoming appeals. Not only does he process these appeals, but he also performs many administrative functions within the unit from assigning appeals to the Hearing Officers to purchasing equipment to training staff on equipment usage to analyzing budget information. OAHA relies very heavily on this person. Many of the functions that this person performs are not documented. If he is unable to return to work unexpectedly, the daily operation of OAHA would be disrupted.

Written procedures are not provided to new Hearing Officers. Instead, they are assigned to an experienced Hearing Officer who is responsible for training them. The trainer is responsible for ensuring that new staff are familiar with the hearing process. Since there are no documented procedures, the training given may not be consistent.

Documented procedures would provide consistency with routine procedures; such as, scheduling a hearing and tracking and closing appeals in the Case Tracker 2000.

The ALJs are tracking and monitoring their assigned appeals that are in the settlement agreement process. However, each ALJ tracks and monitors these appeals differently. The settlement agreement process is when the appeal is taken off the calendar and the two parties negotiate a settlement outside of OAHA. If a settlement agreement cannot be reached in a timely manner, then the appeal should be placed back on the calendar for a hearing and the ALJ renders a final decision. The ALJs are supposed to notify the legal secretaries of the appeals that are in the settlement process. The appeal is logged into the Settlement Log where it is tracked and monitored. Once a reasonable amount of time has passed, but there is no settlement agreement, then the appeal should be placed back on the calendar for a hearing. Some ALJs are doing this in addition to using their own tracking system; whereas, other ALJs are using their own system and not notifying the legal secretaries. Documented procedures would provide consistency with tracking and monitoring appeals that are in the settlement agreement process.

The Hardship Waiver unit is in the process of writing procedures for each function of their unit. Again, documented procedures would provide consistency with processing these appeals.

Criteria

SAM, § 20050 states, in part, that each system an entity maintains to regulate and guide operations should be documented through flowcharts, narratives, desk procedures, and organizational charts.

SAM, § 20050 further states, in part, that experience has indicated that the existence of the following danger signal will usually be indicative of a poorly maintained or vulnerable control system. Entity heads and managers should identify and make the necessary corrections when warned by the danger signal listed below.

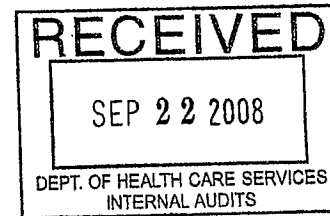
1. Policy and procedural or operational manuals are either not currently maintained or are nonexistent.

Recommendation C

OAHA should create and maintain desk procedures for all of its units and/or functions. By doing this, OAHA will have consistency in its work flow. Plus, having documented procedures alleviates key person dependency.

AUDITEE'S RESPONSE

Memorandum



Date : September 22, 2008

To : Thomas J. Rakela, C.F.E., Chief
Internal Audits
1500 Capitol Mall, MS 2001
Sacramento, CA 95899

From : Office of Administrative Hearings & Appeals
1029 J Street, Suite 202
Sacramento, CA 95814
(916) 322-5603

Subject: Internal Audit Report

We have received the preliminary copy of the report on the internal control structure of processing and monitoring appeals for the Office of Administrative Hearings and Appeals. While we concur with the two findings that 1) the Case Tracker application may not be accurate and 2) the office lacks documented procedures, please accept our explanation and our corrective action plans.

Finding 1 – The appeal tracking system does not accurately reflect the current appeals in process.

Problem:

The Case Tracker 2000 was developed by an outside consultant during the Y2K drill to track all of the incoming appeals for this office. Due to the scarcity of funding, many of the desirable functions were not developed. The archiving functions, system maintenance, and training were not implemented. Due to the complexity of using the Case Tracker application, some of the OAHA staff was apprehensive and reluctant to use this application. Therefore, many of the cases that were completed were not closed out. However, in order to accurately track all of the incoming appeals, OAHA has several backup procedures to ensure that the appeal cases are not lost. In the group drive (file server), we maintain a log of all incoming appeals, decisions issued, settlements pending, and production log. In addition to these logs, each staff maintains his own system to track his own case load. Therefore, OAHA can accurately respond to any inquiry regarding the status of the appeal, either open or closed.

Corrective Action:

Our immediate action is to close out all of the completed cases from the open list in our Case Tracker 2000. This will require all of the Analysts, Hearing Auditors, and Administrative Law Judges to review their case assignments and indicate all of the cases that they have completed. Those cases that have been completed will be removed from the open list by the clerical staff. However, we will not be able to implement the

recommendation made by the internal auditor to post the SCR information on the Case Tracker due to a lack of clerical staff. Also, the Office of Legal Services is in the process of procuring an automated management system (LOCATE) to replace the Case Tracker 2000, time keeping, calendaring, and document control. The target date for the implementation is July 2010.

Finding 2 – OAHA does not have documented procedures for each of its units or functions.

Problem:

For a long period of time, OAHA had very little staff turnover. The majority of the Hearing Auditors and Administrative Law Judges had many years of experience. Therefore, there was no need for written procedures on conducting hearings. When we did get new staff, the training was usually one-on-one with an experienced staff. The training period would last for several months until the new staff could conduct the hearings without assistance.

Because of the budget cuts, OAHA had lost several staff that was performing various administrative functions such as processing appeals, developing BCP's, budgeting, procurement, Information Technology, and appeal assignments. After the cuts, these functions were consolidated to only one staff. There are no written procedures for these functions because the current staff has over 20 years of experience performing these duties. During his absence, another staff has been trained to perform these tasks.

Corrective Action:

OAHA is in the process of writing desk procedures for many of the important functions. A training manual will be developed for the new Hearing Auditors and Administrative Law Judges. OAHA is also developing a plan to create a more efficient organization that includes functional assignments and managerial responsibilities.



Dan L. Colson,
Chief Administrative Law Judge

cc: Bill Alameda, Chief
Administrative Appeals

Patricia Prasad,
Internal Audits

AUDITOR'S COMMENTS

AUDITOR'S COMMENTS

The Department of Health Care Services' (DHCS) Office of Administrative Hearings and Appeals (OAHA) concurs with all of the findings and recommendations contained in this report. However, OAHA states that they will not be able to implement one of the recommendations due to staff resources. If the recommendation was implemented, it would increase the efficiency in which archived cases could be retrieved from the State Record Center. Also, if the recommendation was implemented, it would provide a complete picture of OAHA's cases – from acceptance, to processing of the hearing(s), to archival, to, if applicable, final destruction of the case file.

Internal Audits recognizes and appreciates the diligent efforts made by the staff members of the areas under review. We believe internal controls over OAHA's processing and monitoring of appeals will be significantly strengthened once all the recommendations are fully implemented.